

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL HORACEK,

Plaintiff,

v.

Case No. 07-13822

DERRICK WILSON, et al,

HONORABLE AVERN COHN

Defendants.

**ORDER
ADOPTING REPORT AND RECOMMENDATION
AND
DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT WITHOUT
PREJUDICE**

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff is proceeding pro se and in forma pauperis (IFP). The case has been referred to a magistrate judge for pre-trial proceedings. Before the Court is plaintiff's objections to the magistrate judge's report and recommendation (MJRR) on plaintiff's motion for default judgment against Derrick Wilson. The magistrate judge recommends that the motion be denied without prejudice because Wilson has not been served with the notice of default and the U.S. Marshal's service is attempting to locate him and re-serve the notice of default.¹ Plaintiff objects, contending that because Wilson has not answered the complaint, he does not need to be served with the notice of default. Plaintiff's objection is not well-taken. Wilson must be served with the notice of default before a proper default can be entered. Accordingly, the findings and conclusions of the magistrate judge are

¹Apparently, Wilson's address has been sealed.

ADOPTED as the findings and conclusions of the Court. Plaintiff's motion for default judgment against Wilson is DENIED WITHOUT PREJUDICE.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: February 23, 2009

I hereby certify that a copy of the foregoing document was mailed to Daniel Horacek 218347, 951 Indianwood Road, Lake Orion, MI 48362 and the attorneys of record on this date, February 23, 2009, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160